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TO:

Name: Mail Stop AF  
Group Art Unit 1725/Examiner Kuang Y. Lin

Firm: U.S. Patent & Trademark Office

Fax No.: 571-273-8300

Subject: U.S. Patent Application No. 10/697,664  
Terry Hildreth

Filed: October 29, 2003

METAL INJECTING APPARATUS

Attorney Docket No. 117.0002-00000

Customer No. 22882

Confirmation No.: 8387

FROM:

Name: Thomas H. Martin, Esq.

Phone No.: 330-877-2277

No. of Pages (including this): 8

Date: January 5, 2007

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# PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

117.0002-00000

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on \_\_\_\_\_

Signature \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Application Number

10/697,664

Filed

October 29, 2003

First Named Inventor

Terry Hildreth

Art Unit

1725

Examiner

Kuang Y. Lin

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 34,383

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

  
Signature

Thomas H. Martin

Typed or printed name

330-877-0700

Telephone number

January 5, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

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RESPONSE UNDER 37 C.F.R. 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 1725

PATENT  
Attorney Docket No. 117.0002-00000  
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Confirmation No.: 8387
Terry Hildreth	)	
Serial No.: 10/697,664	)	Group Art Unit: 1725
Filed: October 29, 2003	)	Examiner: Kuang Y. Lin
For: METAL INJECTING APPARATUS	)	

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

In reply to the Final Office Action of November 08, 2006, Applicant submits the following remarks for consideration by the Members of the pre-appeal brief conference.

**I. Brief Background**

The application includes three independent claims, claims 1, 23, and 30, generally drawn to an adapter. After filing a Request for Continuing Examination (RCE) on October 30, 2006 with an amendment adding new claims 37, 38, and 39, claims 1-7 and 23-39 were subject to a final rejection in the Office Action of November 08, 2006. According to the Office Action of November 08, 2006, claims 1-7 and 23-39 stand rejected under 35 U.S.C. § 103(a). The rejection of claims 1-7 and 23-39 are the subject of this Request for a Pre-Appeal Conference.

Pre-appeal Brief Request 1-5-07.doc

Application No. 10/740,747  
Pre-Appeal Brief Request For Review dated January 5, 2007  
Reply to Final Office Action of October 10, 2006

## II. Clear Errors

(1) The Examiner's rejection of claims 1-7 and 23-39 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,311,761 to Steininger et al. ("Steininger") is erroneous because:

(a) Steininger teaches a plunger tip 1 including a body 15 and a fitting 37, where the body 15 and the fitting 37 are capable of articulation with respect to one another to provide for alignment of the plunger tip 1 with respect to a plunger rod 3 within a shot sleeve 5;

(b) Steininger teaches that the body 15 includes a hemispherical recess 29 adapted to receive a ball 39 provided on the fitting 37 to form a ball and socket joint between the body 15 and the fitting 37 to facilitate alignment of the plunger tip 1 and the plunger rod 3;

(c) the Examiner considers the combination of the body 15 and the fitting 37 to be an adapter, and the Examiner acknowledges that, even though Steininger does disclose that a cup-shaped head 71 attached to the body 15 is formed of beryllium copper alloy, Steininger does not disclose that the adapter (the combination of the body 15 and the fitting 37) is made of beryllium copper alloy;

(d) given that the ball and socket joint of Steininger formed by the adapter of the Examiner (the combination of the body 15 and the fitting 37) is configured to swivel and pivot and would encounter significant forces and pressures that would lead one to make the adapter out of a material such as forged steel, and that claims 1, 23, and 30 recite an adapter "being formed of beryllium-copper alloy," the Examiner has not provided a prima facie showing of obviousness, and, therefore, the rejection under 35 U.S.C. § 103(a) cannot be maintained; and

(e) given that the ball and socket joint of Steininger formed by the adapter of the Examiner (the combination of the body 15 and the fitting 37) is configured to swivel and pivot to facilitate alignment of the plunger tip 1 and the plunger rod 3, and that claims 1 and 30 recite "said adapter being configured to maintain the plunger tip and the plunger rod in fixed relationship to one another and to said adapter," and claim 23 recites "said

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Pre-Appeal Brief Request For Review dated January 5, 2007  
Reply to Final Office Action of October 10, 2006

adapter being configured to maintain the plunger tip and the plunger rod in fixed relationship to one another," the Examiner has not provided a prima facie showing of obviousness, and, therefore, the rejection under 35 U.S.C. § 103(a) cannot be maintained.

### III. Conclusion

In view of the foregoing remarks, it is respectfully submitted that the claims are patentable. Therefore, it is requested that the Members of the Pre-Appeal Brief Conference reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: January 5, 2007

By:   
Thomas H. Martin  
Registration No. 34,383

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